



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

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2000 OCT 16 AM 9:40

Ralph Ermer d/b/a
Ermer Recycling
P.O. Box 299
North Salem, NH 03073

Re: Ermer Recycling, 31 Ermer
Road, Salem, NH

ADMINISTRATIVE ORDER**No. WMD 00-026****October 12, 2000****A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Ralph Ermer d/b/a Ermer Recycling pursuant to RSA 147-A:14 and RSA 149-M:15. This Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, New Hampshire 03301. DES is responsible for regulating the management, transportation and disposal of hazardous and solid waste in New Hampshire pursuant to RSA 147-A and RSA 149-M and their implementing regulations, Env-Wm 100 to 1000 and Env-Wm 100 to 300 and 2100 to 3700, respectively.

2. Ralph Ermer is an individual doing business as Ermer Recycling ("Ermer") and having a mailing address of P. O. Box 299, North Salem, NH 03073.

C. STATEMENT OF FACTS AND LAW

1. Ralph and Kathleen Ermer are the record owners of land at 31 Ermer Road, Salem, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 2799, page 1508, identified on the Salem Tax Maps as Map 5, Lot 5920 ("Site").

2. On August 6, 1999, and October 26, 1999, DES received complaints regarding unpermitted solid waste activities at the Site.

3. On August 23, 1999, DES investigated the complaints by conducting an inspection ("August 1999 Inspection") of the Site. The purpose of the inspection was to determine Ermer's compliance status relative to RSA 147-A and RSA 149-M and their implementing regulations, Env-Wm 100 to 1000 and Env-Wm 100 to 300 and 2100 to 3700, respectively.

4. During the August 1999 Inspection, DES personnel observed automotive batteries, home heating oil tanks, computer components, scrap metal, wire, scrap aluminum, large wooden spools, mirrors, empty propane cylinders, an open pan of used oil, one unlabeled 55-gallon drum which Mr. Ermer stated contained used oil, refrigeration units, tires, and unregistered vehicles.

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5. As a result of the August 1999 Inspection, a Report of Initial Complaint Investigation was issued to Ermer advising Ermer to cease operating an unpermitted solid waste facility, and within 60 days to remove all solid waste including but not limited to metals, wire, batteries, and computer components, and to label all used oil containers.

6. On October 26, 1999, DES conducted a follow-up inspection of the Site ("October 1999 Inspection"). During the October 1999 Inspection, DES personnel observed and learned that the air conditioning units, all but one of the batteries, the used oil, and most of the tanks had been removed from the Site. Mr. Ermer was unable to provide copies of disposal receipts for these items. Several piles of wire, non-ferrous metal, tires, propane cylinders, and wooden spools remained at the Site.

7. At the time of the October 1999 Inspection, Mr. Ermer requested an extension to April 2000 to complete removal of the wastes from the Site due to a lack of funds. DES granted the extension request.

8. On February 23, 2000, DES conducted a follow-up inspection of the Site ("February 2000 Inspection"). During the February 2000 Inspection, DES personnel observed very little change at the Site. Several additional vehicles were present. Mr. Ermer indicated he would provide disposal receipts to DES for the wastes that had been removed.

9. On May 24, 2000, DES conducted a follow-up inspection of the Site ("May 2000 Inspection"). During the May 2000 Inspection, DES personnel observed little change at the Site. Mr. Ermer was not present at the time of this inspection.

10. On June 14, 2000, DES conducted a follow-up inspection of the Site ("June 2000 Inspection"). During the June 2000 Inspection, DES personnel observed that some metals had been removed from the Site. Mr. Ermer was unable to provide copies of disposal receipts for the items removed, and several piles of wire, non-ferrous metal, tires, propane cylinders, and wooden spools remained at the Site.

11. On August 18, 2000, DES conducted a follow-up inspection of the Site ("August 2000 Inspection"). During the August 2000 Inspection, DES personnel observed that most of the wooden spools had been broken down and neatly stacked and all metals had either been removed from the Site or been stored in roll-off containers. DES personnel also observed that several piles of wire, tires, two sealed unlabeled 55-gallon drums with unknown contents, and several junk vehicles remained at the Site. A petroleum odor was noted along with a 3-4 foot area of stained soil as well as several smaller areas of stained soil consistent with leaking vehicles.

12. To date, DES has not yet received disposal receipts from Mr. Ermer for any of the wastes that have been removed from the Site.

13. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

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14. RSA 149-M:4, XXI defines "refuse in part, as "any waste product which is composed wholly or partly of such materials as brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
15. The automotive batteries, home heating oil tanks, computer components, scrap metal, wire, scrap aluminum, mirrors, refrigeration units, propane cylinders, and tires observed by DES at the Site on August 23, 1999, October 26, 1999, February 23, 2000, May 24, 2000, June 14, 2000, and August 18, 2000 are solid wastes as defined by RSA 149-M:4, XXII.
16. RSA 149-M:4, IX defines a "facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."
17. The Site constitutes a "facility" as defined by RSA 149-M:4, IX.
18. Env-Wm 102 16 defines "owner" as "a person who owns a facility or part of a facility."
19. Ralph Ermer is the owner of a facility.
20. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."
21. A review of DES files show that Ermer has neither applied for nor holds a permit to operate a solid waste facility at any New Hampshire location.
22. Env-Wm 807.06(b)(2) requires generators to mark containers of used oil destined for recycling with the words "Used Oil for Recycle".
23. Env-Wm 807.06(b)(3) requires generators of used oil being recycled to ensure that all containers are sealed at all times unless actively adding waste to or removing waste from the container.
24. At the time of the August 1999 Inspection, DES personnel observed two unsealed and unlabeled containers of used oil at the Site.
25. Env-Wm 807.06(b)(8) requires used oil to be transported using a three part bill of lading.
26. At the time of the October 1999 Inspection, Mr. Ermer informed DES personnel that he transported the used oil to the Town of Salem Transfer Station. Mr. Ermer stated he had not used a Bill of Lading in transporting used oil off site.
27. Env-Wm 809.02 requires automobile batteries to be stored in a manner designed to ensure that the battery housings do not break or leak acid onto the soil or into any ground waters.
28. During the August 1999 Inspection, DES personnel observed several automobile batteries on the ground.

29. At the time of the June 2000 Inspection, no batteries were observed at the Site.
30. Env-Wm 502.01 requires all generators of waste to determine if the waste is a hazardous waste as set forth in Env-Wm 401.01.
31. During the August 2000 Inspection, DES personnel observed several areas of stained soil and observed two unlabeled 55-gallon steel drums with contents, both of which were sealed.
32. As of the date of this Order, Mr. Ermer has not determined if the stained soil and the contents of the drums are hazardous wastes.

D. DETERMINATION AND NOTICE OF VIOLATION

1. Ermer has violated RSA 149-M:9, I by operating a solid waste facility without first obtaining a permit.
2. Ermer has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on the stained soil and the contents of the two unlabeled 55-gallon drums
3. Ermer has violated Env-wm 807.06(b)(2) by failing to properly mark containers of used oil with the words "Used Oil for Recycle."
4. Ermer has violated Env-Wm 807.06(b)(3) by failing to seal containers of used oil
5. Ermer has violated Env-Wm 807.06(b)(8) by failing to use a bill of lading in transporting used oil.
6. Ermer has violated Env-Wm 809.02 by failing to store automobile batteries in a manner designed to ensure the battery housings do not break or leak acid onto the soil or into any ground waters.

E. ORDER

Based on the above findings, the Department of Environmental Services hereby orders Ermer as follows:

1. **Immediately** cease accepting or bringing any solid waste to the Site
2. **Within 45 days** of this Order, submit to DES for approval a Scope of Work prepared by a qualified environmental consultant for the removal of all solid waste, stained soil, and containers with unknown contents at the Site, as well as the identification of the nature and extent of soil and groundwater impacts at the Site from discharges to the environment. Include as part of the Scope of Work a schedule which details when the work will be done.

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3. If analyses of the soil or the groundwater shows any violations of the cleanup standards as detailed in the Contaminated Sites Risk Characterization and Management Policy dated January 1998, initiate activities to satisfy the requirements of the policy within 30 days of receiving the analyses.
4. **Within 30 days** of this Order, submit a written status report identifying the consultant required by item E.2 and provide documentation that certifies the consultant has been retained.
5. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste, hazardous waste/used oil, and stained soil at the Site to a facility or facilities permitted to accept such wastes.
6. **Within 7 days** of the disposal of the solid waste, forward copies of disposal receipts to DES.
7. **Within 7 days** of the disposal of the stained soil, forward copies of disposal receipts to DES.
8. **Within 7 days** of the disposal of the contents of the unlabeled containers, forward copies of disposal receipts and or hazardous waste manifests to DES.
9. Submit one written status report to DES **within 50 calendar days** of this Order and a second report **within 150 calendar days** of this Order, certifying that corrective measures have been implemented in accordance with the approved Scope of Work and compliance achieved. Include in each report supporting documentation describing those measures taken to achieve compliance during the reporting period, copies of any written plans or proceedings developed.

Please address correspondence to:

Kenneth W. Marschner, Administrator
DES, WMD
6 Hazen Drive
Concord, New Hampshire 03301

F. APPEAL

If you are aggrieved by this Order, you may appeal this decision to the Waste Management Council. Such an appeal must be made to the Council within thirty (30) days of issuance of this Order in accordance with Env-WMC 200. Such an appeal must be addressed to Chairman, Waste Management Council, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095. Appealing the Order does not automatically relieve you of your obligation to comply with the Order.

G. OTHER PROVISIONS

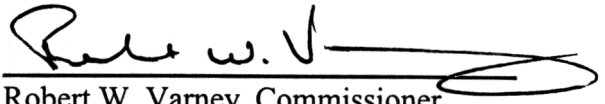
This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

Please note that RSA 147-A and RSA 149-M provide for civil and criminal penalties and administrative fines for violations of the statutes or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 147-A:14 and RSA 149-M:15 provide for civil forfeitures of up to \$50,000 and \$25,000 respectively for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against you by referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. Please be advised that DES reserves the right to pursue administrative penalties for the violations noted above.

DES personnel will continue to monitor Ermer's compliance status and will take appropriate action should additional violations be documented. As additional information becomes available, DES may issue further directives regarding the management and disposal of wastes on the Site and the assessment and remediation of environmental impacts resulting from waste management activities practiced at the Site. Ermer remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M and its implementing regulations, Env-Wm 100 to 1000 and Env-Wm 100 to 300 and 2100 to 3700, respectively.



Philip J. O'Brien, Ph.D., Director
Waste Management Division
Department of Environmental Services



Robert W. Varney, Commissioner
Department of Environmental Services

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cc DB/FILE/ORDER
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Enclosures: Administrative Order Fact Sheet CO-7

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